

**STATE OF CALIFORNIA  
FRAUD ASSESSMENT COMMISSION MEETING  
SACRAMENTO, CALIFORNIA  
MARCH 1, 2007**

Attendees: William Zachry, Chairperson; and Commission Members Darlyn Regan, Chuck Center, and by teleconference Jiles Smith.

Others present: Dale Banda, Deputy Commissioner, Enforcement Branch; Rick Plein, Fraud Division Bureau Chief, Workers' Compensation; and Vanessa Himelblau, Senior Staff Counsel, CDI Legal Division.

Chairperson Zachry called the meeting to order.

**Motion**

Commission member Darlyn Regan made the motion to approve the July 27, 2006 meeting minutes as submitted.

Commission member Chuck Center seconded the motion.

**Action**

The motion passed unanimously.

**Motion**

Commission member Regan made the motion to approve the meeting minutes summary for November 29, 2006.

Commission member Center seconded the motion.

**Action**

The motion passed unanimously.

Dori Rose Inda, Director of the Watsonville Law Center, addressed the Fraud Assessment Commission (FAC). The Watsonville Law Center established the Workers' Compensation Enforcement Collaborative and Mr. Zachry has participated in their efforts.

The project includes the local community clinic, a couple of legal services offices and the California Rural Legal Assistance to promote outreach and education to the low-wage worker community. These are mainly agricultural workers that are being educated about their rights to workers' compensation and medical care for a work injury. The community clinic is unique because it agreed to provide medical services for injured workers whether or not they had a referral from an employer or a claim at that time.

One of the main goals of the collaborative is to make sure that employers who employ these low-wage workers provide workers' compensation insurance, report injuries and refer workers to medical providers.

The second goal is to improve employer fraud-reporting enforcement. This working population is afraid to report a non-compliant employer. “We are developing a standard reporting form that doesn’t require the actual injured worker to be the reporting party,” commented Ms. Inda.

The third goal is to develop more effective long-term programs and statewide policies. The collaborative is communicating with Kaiser regarding the possibility of “adding an arm” to workers’ compensation.

Commission member Center raised the issue as to what geographical areas were covered by the Watsonville Law Center and commended Ms. Inda on her efforts. Mr. Center offered to encourage someone from organized labor to be involved.

The Watsonville Law Center serves Monterey, Santa Cruz, and San Benito County areas. However, the work being done within the Workers’ Compensation Enforcement Collaborative addresses statewide issues.

Chairperson Zachry remarked that the collaborative meetings he has attended have been very educational. Mr. Zachry was dismayed to learn that it can take an average of two years from the date of injury to the date of first service for first benefits from the Uninsured Employers Fund.

Commissioner Jiles Smith reported on the FAC outreach efforts and is working on a PSA to get the information out to everyone about the need for workers’ compensation insurance. He also acknowledged the videos produced by Laura Clifford and the members of the Employers’ Fraud Task Force.

Chairperson Zachry raised the legislative issues that the Commission supported at the last meeting. This legislation, commonly referred to as a “wobbler”, moves a misdemeanor to a potential felony when an employer fails to provide workers’ compensation insurance to their employees.

Deputy Commissioner Banda commented that at this time, the exact status of the legislation is unknown. The California District Attorneys Association (CDAA) is pushing the bill through the process and can provide updates.

Chairperson Zachry remarked that this year the aggregate meeting date is scheduled for September 11, 2007.

Toni Curtis, Supervisor, Special Investigative Compliance Review Office, Fraud Division, reported on some of the common findings involved with insurance companies in their effort to detect and report insurance fraud.

A brief overview of how the unit conducts audits was presented. A preliminary exam and analysis of documents and information are completed prior to the field audit. A preliminary report is written and then the final report if necessary shows the findings have or have not been resolved.

For fiscal year 2005/06, the unit reviewed 14 primary insurers, which included 41 subsidiaries for a total of 55 companies audited in the period. Sixty-two percent are licensed to write and are currently writing workers' compensation insurance in California noted Ms. Curtis.

The electronic submission of suspected fraudulent claims is proving to be mutually beneficial. In the workers' compensation arena, the common findings seem to reflect more effective SIUs within the companies. One of the areas that needs improvement is the written procedures, which do not always include everything required by regulation.

Ms. Curtis remarked that the change to a 60-day requirement for a company's SIU to refer suspected fraud to the Department of Insurance, Fraud Division has proven helpful.

Another issue uncovered is that not all the SIU staff for a company will be receiving the required training.

Deputy Commissioner Banda added that the Department's SIU works toward getting the insurance company committed -- not just compliant. Also, that the pure audit function is to audit to the actual regulation and not to a best practice.

Chairperson Zachry raised the issue of having the audit findings publicly published. Vanessa Himelblau, Senior Legal Counsel with the Department commented that preliminary audit of specific data is to be considered confidential for the purpose of promoting full compliance on behalf of insurers.

Chairperson Zachry requested that this issue item be placed on the next meeting agenda to give the Department an opportunity to develop a legal opinion, and also, to identify the legal codes that define why and why not this information can or can not be public.

Deputy Commissioner Banda commented that the Department would review the issue and determine what is appropriate.

Dan Stroski, Yolo County raised the issue as to whether or not the auditors look into the dual reporting aspect of workers' compensation. The Department's SIU does note whether or not the insurance company is following dual reporting requirements, remarked Ms. Curtis.

Christine Baker, Executive Director, California Commission on Health and Safety and Workers' Compensation (CHSWC), presented the update on the research study. In December 2004 at the CHSWC meeting, William Zachry, Chair of the Fraud Assessment Commission, requested the commission's assistance with the anti-fraud research project.

In February 2005, the working group met and decided that the FAC and CHSWC would partner with agencies including the Department of Insurance, to develop a study plan on how to measure workers' compensation, medical provider fraud and other types of suspected workers' compensation fraud.

In 2006, the FAC allocated funds to conduct a study of medical overpayments and underpayments. The Request for Proposal (RFP) was developed and made public. In August of 2006, Navigant Consulting was selected to conduct the medical payment accuracy study. "Navigant's general approach to the study is to review a sample of workers' compensation medical bills and supporting documentation for medical services paid by insurance carriers and claims administrators as well as conduct a survey of injured workers to verify they receive the services," stated Baker. Pending legal authority, a letter will be distributed to insurance carriers to make the data accessible for the study.

CHSWC currently has several projects underway. The first study deals with the under reporting of premium and is about 90 percent completed. Additionally, we are looking in the "gray economy". CHSWC is taking Uninsured Employers Fund cases and matching them to the reported payroll (If they reported their payroll).

Another study being conducted is to determine what percentage within the entire system goes uninsured. This project should be concluded in June 2007.

Commissioner Center raised the issue as to whether or not the taskforce was still in operation. The Fraud Division is involved in the underground economy task force. This is a multi-agency group that meets to make sure that everyone is working uniformly on enforcement actions.

Commissioner Regan raised the issue as to the completion date of the underground economy study. Director Baker indicated that this project was about 90% complete and under peer review. The study is also sent to the rating bureau for their evaluation.

Chairperson Zachry thanked the Commission for their assistance on the study.

Vanessa Himelblau, Senior Staff Counsel, presented clarification on the guidelines for taping and videotaping at FAC meetings. Members of the press and the public have a designated area in the back of the room for cameras and taping. You are to be responsible for bringing your own equipment and for setting up that equipment safely. If you think a microphone is necessary, you may set it up from the front table to the back of the room in the designated area. Please arrive about 45 minutes early to complete these tasks prior to the meeting.

Second issue is regarding the study. In order to request information from the insurance carriers, the Department will utilize California Insurance Code Section 12924. This section includes a power of subpoena.

Rick Plein, Bureau Chief Workers' Compensation Insurance Program, reported on the grant application process. The Requests-for-Application (RFAs) have been sent out to the district attorneys statewide. On March 22, 2007, the Fraud Division will hold the annual District Attorney Information Meeting to cover grant programs.

The Workers' Compensation Grant applications are due May 1, 2007 by 5:00 p.m. in the Headquarters location. The Department has scheduled the Review Panel for June 5, 2007.

Chairperson Zachry requested that Chris Carpenter, Chief Assistant Deputy District Attorney, Alameda County, stand and be recognized for his years of hard work, good efforts and conscientious attention to the process. Mr. Carpenter is retiring. "Thank you very much for coming today," stated Chairperson Zachry.

### **Public Comment**

Dina Padilla, Voices Best, an injured workers advocacy group, addressed the FAC. Ms. Padilla is a former employee of Kaiser and is aware of about 100 employees injured on the job with Kaiser and alleges that their injuries were hidden. Ms. Padilla remarked that injured workers need to be on the commission. "We need somebody to go there to these self-insured employers who are not reporting and hiding all these injuries," said Padilla.

Sam Gold, Producer of Injured on the Job, (a television show) remarked that in the state there are a lot of instances where innocent, injured workers are being accused of fraud. "You know, you have got to go after the people that are causing the fraud and that goes for insurance companies too," commented Gold.

Steve Zeltzer, Chair of the California Coalition for Workers' Memorial Day, noted that it is scandalous workers in the agriculture section, who are not getting coverage. We see cases where workers are being told by their lawyers and by the judges that they should go on SSI or ADFC to take care of their injuries. "Their injuries took place on the job. In our view, this is fraud," stated Zeltzer. Also, workers who are injured on the job are afraid to report or apply for workers' compensation because they may be fired. We have met with the Insurance Commissioner and plan to write to him regarding these situations.

Linda Roberts addressed the FAC on medical underpayment. Ms. Roberts was first injured on the job in 1999. As a state employee, she was covered but was forced to retire six years ago on disability after they failed to accommodate her for two years. With the passage of SB 899, she was cut off from treatment that was working and had to switch to an MD who prescribed medications. The current doctor has not received payment for her treatment.

Dennis Bauer, Deputy District Attorney Orange County, presented an overview about outreach. Laura Clifford, Employers' Fraud Task Force, is working on a video entitled, "Employees Rights and Responsibilities." This video is sponsored by the Industrial Claims Association, the Small Businesses of California, Kammemer and Company, the Southern California Council on Self-Insured's and the Employers' Fraud Task Force.

Sandra Wood addressed the FAC regarding a personal issue about an unpaid workers' compensation bill. Ms. Woods raised the issue as to why the doctor was paid and not the hospital.

Beverly Shank, an injured worker in 1974, addressed the FAC regarding her specific case. She reported that her employer, and not Medicare, should be paying her claims for her injury.

Commission member Chuck Center raised the issue that it is an improper use of the FAC time and money to discuss individual complaints with employers. Individual complaints do not fall under the authority of the FAC. Additionally, Mr. Center has worked with the Fraud Division throughout the years to sponsor legislation to go after employers and anybody that violates the law and that is where the Commission has placed their efforts and support. "I just want to make that officially noted," stated Center.

Paul Fick, Senior Deputy District Attorney for Riverside County, reported on the Mowbry tree case. In 2004, the company had approximately 600 workers in the tree removal business. The majority of the company's work was focused during the wake of forest fires and the bark beetle infestation war in the San Bernardino mountains.

Dennis Mowbry was sentenced to 9 years, 8 months in state prison. James Williams was sentenced to 1 year in state prison and Richard Mowbry to 12 years, 8 months in state prison. This afternoon, restitution will be ordered in the amount of \$781,557.42 to Employment Development Department and \$4,553,100.72 to State Compensation Insurance Fund totaling \$5,334,000 and change remarked Fick. "Also, we have another premium fraud case in which we will be filing charges, and we believe that the loss in that case is upwards of 7 million dollars," said Fick.

Gary Fagan, Deputy District Attorney with San Bernardino County and Co-Chair, Insurance Fraud sub-Committee for the California District Attorneys Association (CDAA), addressed the FAC. Last year CDAA had legislation regarding the uninsured employer. The bill would have changed the uninsured penalty provision from a misdemeanor to a felony. Unfortunately, CDAA was not able to find a legislative sponsor for the issue. This year a San Diego District Attorney has proposed a bill to elevate the uninsured employers' status to a wobbler under certain circumstances.

Alameda County has proposed legislation to make modifications to the statute of limitations, which will give a little more flexibility by extending the life of a case once it is filed. "It has been a very, very difficult legislative path for criminal justice legislation for about the last six years," remarked Fagan.

Chairperson Zachry commented that the next FAC meeting is scheduled for June 13, 2007.

The meeting was adjourned.